The Chairman of the IFRS IC

Columbus Building, 7
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Canary Wharf

London E14 4HD.

30 July 2019

Dear Ms Lloyd,

Re : Tentative agenda decision “**Presentation of Liabilities or Assets related to Uncertain Tax Treatments**

We are pleased to provide comments on the tentative agenda decision of the IFRS Interpretations Committee (IFRIC) regarding the presentation of liabilities or assets related to uncertain tax treatments.

We disagree with the conclusion that the texts are clear enough and that an agenda decision is sufficient to solve this issue for the following principal reasons:

- We believe that the Committee’s reading of the different standards is not the only one possible;
- The presentation issue of Uncertain Tax Position is not specifically addressed by current standards and therefore any conclusion is by essence “interpretative” and deserves standard-setting activity;
- The information that would be provided if the Committee’s decision were applied could be less useful for users;

- The proposed outcome exposes French companies to fiscal and judicial risks much more prejudicial compared to the benefits that might be perceived from the committee's decision.

We propose the following alternative reading

Since IFRIC 23 does not deal with the issue of the presentation of tax assets or tax liabilities, the principles of presentation remain those of IAS 12 and IAS 1.

IFRIC 23 was developed to provide guidance as to the application of IAS 12 when an entity is in a position of uncertainty about the tax treatment that will be accepted by the taxation authority. Paragraph 4, which defines the scope of the Interpretation, states that its purpose is to clarify the recognition and measurement of items in such circumstances and does not mention presentation at all. This restriction of the scope of the Interpretation was specifically commented upon by the Committee at the time of its consideration of the comments received on the draft Interpretation, and the Committee also opined that the requirements of IAS 1 were sufficient – see below the extract from the Committee's Agenda Paper from its September-2016 meeting. The original source of the proposed amendments was a question about the recognition of an "uncertain" tax asset. Moreover, the IFRIC had already noted diversity in practice in respect of measurement approaches in such circumstances, such as, for example, in the use of weighted averages or best estimates, the unit of account, etc. These are the issues that the Committee intended to resolve with IFRIC 23. There appears to have been no discussion about the presentation of uncertain tax positions on the balance sheet and no questioning of the practices in place.

Extract from the Agenda Paper of September 2016:

Issues

5 When there is uncertainty over income tax treatments, this Interpretation addresses:

(a) whether an entity considers uncertain tax treatments separately;

(b) the assumptions an entity makes about the examination of tax treatments by taxation authorities;

(c) how an entity determines taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates; and

(d) how an entity considers changes in facts and circumstances.

18	Presentation	A few respondents said that the Interpretation should address the presentation of tax liabilities, and in particular how to apply the current/non-current presentation requirements in IAS 1.	This was not previously discussed by the Interpretations Committee.	The Interpretation specifically relates to uncertain tax treatments. Therefore the presentation of current/non-current tax liabilities is not within its scope. We do not propose to address this wider comment as part of the project.

19	Presentation	An accounting firm suggested stating explicitly that an entity should not present the effects of uncertainties over income tax treatments as an asset or liability separately from current or deferred tax assets or liabilities.	This was not previously discussed by the Interpretations Committee.	We think that the requirements in IAS 1 are sufficient in this respect—IAS 1 specifies the minimum line items to be presented in the statement of financial position, and in paragraph 55 includes a principle for the presentation of additional line items—ie when presentation is relevant to an understanding of the entity's financial position. We do not propose to amend the draft Interpretation for this comment.

Since the Interpretation does not deal with the presentation in the statement of financial position, any parts of the examples which show the presentation of relevant items cannot be considered to be authoritative. These are simply a schematic illustration of the opposite side of the entries made to the profit and loss account to reflect the estimated impact on the current and deferred tax charges generated by the uncertain tax position. Examples of this sort cannot be interpreted to represent the sole reading possible of an issue of presentation which is not dealt with by this Interpretation.

Presentation requirements of IAS 12

The only guidance in IAS 12 relating to the presentation on the balance sheet of tax assets and tax liabilities is contained in paragraphs 70 to 76. This guidance deals only with the rules for offsetting tax assets and liabilities
IFRIC 23 does not modify the requirements of IAS 12 in respect of the balance-sheet presentation of tax assets and liabilities. In addition, IAS 12 does not provide any dedicated guidance for the balance-sheet presentation of uncertain tax positions. Hence any conclusion in an agenda decision is in essence interpretative.

Inconsistencies with IAS 37 scope exclusion

Paragraph IAS 37.5 states that "*When another Standard deals with a specific type of provision, contingent liability or contingent asset, an entity applies that Standard instead of this Standard.*" Income tax is one of the specific examples provided in paragraph 5.b).
This has been read so far by many as meaning that some elements of IAS 12 are considered as having a "provision" characteristic and that, if they are to be recognised and measured according to specific standards, namely IAS 12, they may nevertheless be presented as "provision" in the statement of financial position. It is also the case for example for provisions on employee defined benefit plans representative of their unfunded status.

The fact that IAS 1 specifies in paragraph 54 that an entity should present assets and liabilities for current and deferred tax as defined by IAS 12 only means that such line should only include items within the scope of their definition in IAS 12. It does not specifically preclude an entity from presenting some other elements of income tax within another line within the statement of financial position, if it is considered as more relevant.

This interpretation seems to be reinforced by the way IAS 1.54 is written for those line items. Whereas paragraphs (n) and (o) explicitly refers to IAS 12, for current tax assets and liabilities, and deferred tax assets and liabilities respectively, paragraph (l) only mentions the word "provisions". We understand that, in conjunction with our reading of paragraph 5 of IAS 37, the intent of the Board has not been so far to preclude the line item "provisions" within the statement of financial position to incorporate elements of an uncertain nature whose recognition and measurement principles are dealt with in another standard (i.e. IAS 12 for income taxes and IAS 19 for employee benefits).
Hence, a change in the Board's intent should be dealt with by undertaking standard-setting activity. We think an IFRS IC agenda decision is not the proper tool according to the principles contained in the due process handbook.

Presentation requirements of IAS 1

Paragraph 54 of IAS 1 requires the presentation of line items for the amounts of "liabilities and assets for current tax" and "deferred tax liabilities and deferred tax assets".

Paragraph 57 specifies that the "standard does not prescribe the order or format in which an entity presents items. Paragraph 54 simply lists items that are sufficiently different in nature or function to warrant separate presentation…" Moreover, paragraph 57(b) states that the descriptions, the ordering and the aggregation of items can be amended to provide information that is relevant to the understanding of the entity's financial position.

In addition, paragraph 58 lists the characteristics that could lead an entity to judge that items should be presented separately. These include, notably, "the timing of liabilities".

Paragraph 29 of IAS 1 requires an entity to separate items of a dissimilar nature or function. These principles of aggregation (or disaggregation) are also reinforced in the project that the IASB is currently developing on the presentation of financial statements. In that project the principles of aggregation and disaggregation are notably based on the sharing of common characteristics by different items consistently with the principles of the new conceptual framework

In a similar vein, although IAS 37 paragraph 5(b) excludes from its scope provisions for income taxes addressed by IAS 12, it also excludes provisions for employee benefits addressed by IAS 19. Nonetheless, the presentation of these in a line item "provisions" in the balance sheet is a practice which is widespread today and yet has never been the cause of contention. The line "provisions" already aggregates elements which share the characteristic of having a very high degree of uncertainty related to them and requiring the exercise of judgement. The detail of the nature of the items included in this caption is laid out in the notes.
Furthermore, IAS 37 is a standard which prescribes the measurement and recognition criteria for provisions which are not dealt with by another, more specific, standard, but, in common with IAS 12, it does not deal with the balance-sheet presentation of the items it deals with.

Relevance and usefulness of the outcome

In reflecting on the application of the principles of IAS 1, and in the light of the current discussions of the IASB on the presentation of financial statements, we come to the following conclusions:

That it is often more relevant and understandable (and thus consistent with IAS 1), to separate the liabilities related to uncertain tax positions from other current and deferred tax liabilities whose amounts and timing are much more certain. Indeed, even though both are within the scope of IAS 12 for measurement and recognition purposes, the uncertain tax positions seem to us to be of a very different nature from that of tax liabilities (whether current or deferred).

In practice, when entities apply IFRIC 23 they start by determining the amount of the current tax liability in line with those elements declared in the tax computation. These amounts will correspond to the amount of tax declare in the tax return, and both the amount and the timing are certain. Deferred tax amounts, included DTA on tax losses, are arrived at by a process which is also derived from the amounts declared in the tax return. In contrast, the measurement of uncertain tax positions is often the result of a distinct calculation and management process. Even though the measurement method respects the requirements of IFRIC 23, nonetheless, the resultant liability is distinct since its amount and timing are far less certain than the current and deferred taxes. It would therefore not be relevant to present such elements in aggregation with current and deferred tax liabilities, for which the user would expect a high level of certainty as to the outcome. It seems to us, therefore, to, be reasonable to present elements with this higher level of uncertainty in a balance-sheet caption which is distinguished notably by its characteristic of uncertainty, that is, amongst the provisions.

Judicial and Fiscal Risk

The potential impact of the Committee's tentative decision should be examined in the specific context of the adoption in France in 2018 of a general anti-abuse rule targeted at abusive tax avoidance schemes deemed to be classified as a criminal offence (Law n°2018-898 of 23 October 2018). Pursuant to this law, situations where tax audits can result in a transfer of the case to the prosecutor's office have been widened. In particular, such transfer will now be automatic in the case of tax reassessments that are considered by the French tax authorities as an intent to minimise tax (i.e., on the basis of abuse of law or when a corporation incurs, for the second time in six years, penalties for bad faith) as soon as the avoided amount of tax is in excess of 100,000 €. In parallel, the range of cases where these penalties can be imposed has also been widened. Under these circumstances and as already pointed out by the ANC to the IFRS IC, presenting tax uncertainties as liabilities in the consolidated financial statements could be considered by the French tax authorities "as an acknowledgment of debt or the evidence of an intent that could be invoked against the entity in a tax dispute even if those uncertainties are eventually presented as a provision under local GAAP".

We understand that the Committee cannot deal with all the local specificities, but this legal and fiscal context argues in favour not only of differentiated presentation in the financial statements but also of particular provisions relating to sensitive information as can be found in the standard IAS 37 and as already exist for contingent assets and contingent liabilities in paragraph IAS 12.88.

If you require any clarification or information, please do not hesitate to contact us.

Yours sincerely,

ACTEO

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Chairman

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